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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 8th August, 2011:—

BILL NO. 40 OF 2011

A Bill further to amend the Damodar Valley Corporation Act, 1948.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Damodar Valley Corporation (Amendment) Act, 2011.

Short title
and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 4 of the Damodar Valley Corporation Act, 1948 (hereinafter referred to as the principal Act), for sub-section (1), the following sub-sections shall be substituted, namely:—

Amendment
of section 4.

"(1) The Corporation shall consist of—

(a) a Chairman;

(b) a member (technical) and a member (finance);

(c) one representative from the Central Government;

(d) two representatives one each from the State Governments of Jharkhand and West Bengal;

(e) three independent experts one each from the field of irrigation, water supply and generation or transmission or distribution of electricity; and

(f) a Member-Secretary.

(1A) The Chairman and members under clauses (a), (b), (d) and (f) of sub-section (1) shall be appointed by the Central Government in consultation with the State Governments concerned while the members under clauses (c) and (e) shall be appointed by the Central Government, by notification in the Official Gazette.

(1B) The Chairman and members under clauses (a), (b) and (f) of sub-section (1) shall be whole-time while the members under clauses (c), (d) and (e) shall be part-time.

(1C) The Chairman shall be the Chief Executive Officer of the Corporation.

(1D) Without prejudice to the provisions contained in sub-section (1C), the Member-Secretary shall be in charge of general administration and business development of the Corporation.”.

Amendment
of section 6.

3. In section 6 of the principal Act, sub-sections (1) and (2) shall be omitted.

Amendment
of section 7

4. In section 7 of the principal Act, clause (a) shall be omitted.

Substitution of
new section
for section 8.

5. For section 8 of the principal Act, the following section shall be substituted, namely:—

Functions and
duties of
members.

“8. The functions and duties of the members shall be such as may be prescribed.”.

Amendment
of section 44.

6. In section 44 of the principal Act, in sub-section (1), for the words “financial adviser”, the words and brackets “member (finance)” shall be substituted.

Amendment
of section 59.

7. In section 59 of the principal Act,—

(a) in sub-section (1), the words “the secretary and the financial adviser” shall be omitted;

(b) in sub-section (2), for the words “financial adviser”, the word “members” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Damodar Valley Corporation Act, 1948 has been enacted to provide for the establishment and regulation of a Corporation for the development of the Damodar Valley in the States of Bihar (now Jharkhand) and West Bengal. The functions of the Corporation under the Act, *inter alia*, provided for the promotion and operation of schemes for irrigation, water supply and drainage, the generation, transmission and distribution of electrical energy, the promotion and control of navigation in the Damodar River and its tributaries and channels, afforestation and control of soil erosion, promotion of public health and the agricultural, industrial, economic and general well-being in the Damodar Valley and its area of operation.

2. Under the Damodar Valley Corporation Act, 1948, the Corporation consists of a Chairman and two members, appointed by the Central Government after consultation with the concerned State Governments.

3. Over the last more than sixty years, the role and expectations from Damodar Valley Corporation have changed significantly due to industrial development in the valley area. The demand for power by industry, especially coal, steel, railways and other consumers has gone up considerably. Damodar Valley Corporation has built power plants and stepped up its generation capacity over the years. Thus, the Damodar Valley Corporation has grown into a large generating company with its own transmission and sub-transmission network. The Administrative Staff College of India recommended restructuring of the Corporation to make it more broad-based and professional so that it may discharge its responsibilities more effectively and efficiently.

4. Based on the inter-ministerial consultations, a Bill namely "the Damodar Valley Corporation (Amendment) Bill, 2007" was introduced in the Lok Sabha on 4th May, 2007, and the same was referred to the Standing Committee on Energy which gave its report on the 7th September, 2007. The said Bill, *inter alia*, provided that the Damodar Valley Corporation would consist of (i) a whole-time Chairman; (ii) a whole-time Member Technical; (iii) a whole-time Member Finance; (iv) one representative from the Central Government, as part-time Member; (v) two representatives one each from the State Governments of Jharkhand and West Bengal, as part-time Members; (vi) three independent experts one each from the field of irrigation, water supply and generation or transmission of electricity as part-time Members. The Committee supported the amendments proposed in the aforesaid Bill and also recommended that the Secretary of the organisation should be made a full-time Member of the Board to enhance the functioning capabilities of the organisation as has been recommended by the Administrative Staff College of India. However, the Damodar Valley Corporation (Amendment) Bill, 2007 lapsed with the dissolution of the Lok Sabha.

5. It is now proposed to introduce the Damodar Valley Corporation (Amendment) Bill, 2011 to,—

(a) change the composition of the Damodar Valley Corporation on the lines of the earlier lapsed Damodar Valley Corporation (Amendment) Bill, 2007 with the addition that there shall be a whole-time Member-Secretary;

(b) provide that the Chairman shall be the Chief Executive Officer of the Corporation;

(c) provide that the Member-Secretary shall be in-charge of the general administration and business development of the Corporation;

(d) abolish the posts of secretary and financial advisor.

6. The Bill seeks to achieve the above objectives.

BILL NO. 44 OF 2011

A Bill further to amend the Customs Act, 1962.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Customs (Amendment and Validation) Act, 2011.

Amendment
of section 28
of Act 52 of
1962.

2. In section 28 of the Customs Act, 1962, after sub-section (10), the following sub-section shall be inserted, namely:—

“(11) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the 6th day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section.”.

STATEMENT OF OBJECTS AND REASONS

The Customs Act, 1962 consolidates and amends the law relating to customs. Clause (34) of section 2 of the said Act defines the expression “proper officer” in relation to the functions under the said Act to mean the officer of customs who is assigned those functions by the Central Board of Excise and Customs or the Commissioner of Customs. Recently, a question has arisen as to whether the Commissioner of Customs (Preventive) is competent to exercise and discharge the powers of a proper officer for issue of a notice for demand of duty. The Hon’ble Supreme Court of India in **Commissioner of Customs versus Sayed Ali and Anr.** (Civil Appeal Nos. 4294-4295 of 2002) held that only a customs officer who has been specifically assigned the duties of assessment and re-assessment in the jurisdiction area is competent to issue a notice for the demand of duty as a proper officer. As such the Commissioner of customs (Preventive) who has not been assigned the function of a “proper officer” for the purposes of assessment or re-assessment of duty and issue of Show Cause Notice to demand customs duty under Section 17 read with Section 28 of the Act in respect of goods entered for home consumption is not competent to function as a proper officer which has not been the legislative intent.

2. In view of the above the Show Cause Notices issued over the time by the Customs officers such as those of the Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence and others, who were not specifically assigned the functions of assessment and re-assessment of customs duty may be construed as invalid. The result would be huge loss of revenue to the exchequer and disruption in the revenue already mobilized in cases already adjudicated. However, having regard to the urgency of the matter, the Government issued notification on 6th July, 2011 specifically declaring certain officers as proper officers for the aforesaid purposes.

3. In the circumstances, it has become necessary to clarify the true legislative intent that Show Cause Notices issued by Customs officers, *i.e.*, officers of the Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Central Excise Intelligence (DGCEI) and Central Excise Commissionerates for demanding customs duty not levied or short levied or erroneously refunded in respect of goods imported are valid, irrespective of the fact that any specific assignment as proper officer was issued or not. It is, therefore, purposed to amend the Customs Act, 1962 retrospectively and to validate anything done or any action taken under the said Act in pursuance of the provisions of the said Act at all material times irrespective of issuance of any specific assignment on 6th July, 2011.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

PRANAB MUKHERJEE.

The 2nd August, 2011.

PRESIDENT’S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 437/143/2009-Cus.IV, dated 2.8.2011 from Shri Pranab Mukherjee, Minister of Finance to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Bill, recommends, under clause (1) of Article 117 of the Constitution of India, the introduction of the customs (Amendment and Validation) Bill, 2011 in Lok Sabha.

T.K. VISWANATHAN,
Secretary-General.